

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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75-1318

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P/S*

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 75-1318

UNITED STATES OF AMERICA,

Appellee,

—against—

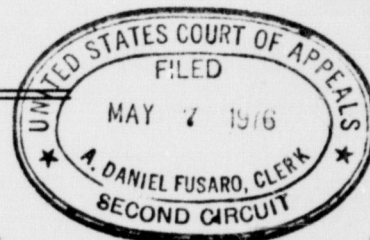
RICARDO E. INNISS and GERTRUDE McLENAN,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

DAVID G. TRAGER,
*United States Attorney,
Eastern District of New York.*



PAGINATION AS IN ORIGINAL COPY

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on

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA :

against :

RICARDO INNESS and :
GERTRUDE McLEAN :

74 CR 791

Defendants :

-----x

United States Courthouse
Brooklyn, New York

March 14, 1975
9:50 a.m.

B e f o r e

HONORABLE ORRIN G. JUDD,

U.S.D.J.

SHELDON SILVERMAN
Acting Official Court Reporter

Appearances:

DAVID G. TRAVER, Esq.
United States Attorney for the
Eastern District of New York

By: BERNARD FRIED, Esq.
Assistant U.S. Attorney

IRA LONDON, Esq.
For Defendant Inness

HERBERT HANDMAN, Esq.
For Defendant McLean

1 THE CLERK: United States of America versus
2 Ricardo Inness and Gertrude McLean.

3 THE COURT: I have this down now for Monday.
4 At present I'm trying a case which I don't know
5 whether it's going to plead out or not. I have
6 another one ahead of it.

7 What's your situation? You've been down
8 to see your father.

9 MR. LONDON: I'm going again tonight. His
10 condition is not good, your Honor. He developed
11 pneumonia postoperatively.

12 THE COURT: That's too bad.

13 What's your request?

14 MR. LONDON: I would just like to fix another
15 date. I've received materials from the U.S. Attorney
16 which I haven't even been able to examine. In view
17 of my present situation, I would ask for a date late
18 in April or early in May.

19 THE COURT: There's nobody in custody at
20 the present time, is there?

21 MR. LONDON: No.

22 THE COURT: It was a sealed indictment, so
23 I don't think there were any earlier arrests.

24 MR. LONDON: No, only two defendants.

25 THE COURT: January 31. The indictment was

1 December 17 and the defendants weren't represented
2 until January, I guess.

3 MR. FRIED: January 31, your Honor, 1975.

4 THE COURT: I suppose there's no harm in
5 granting an adjournment.

6 Mr. Handman, you were ready for next Monday.

7 MR. HANDMAN: Yes. Might I say something?

8 THE COURT: Yes.

9 MR. HANDMAN: First of all, of course, I was
10 ready for Monday, the only little hitch being that
11 Mr. DePetris hadn't yet supplied me with any ma-
12 terial whatsoever, but I don't expect voluminous
13 materials, so I don't think that would necessitate
14 a delay.

15 The other thing I wanted to say was in view
16 of Mr. London's situation regarding his prior
17 representation which was the subject of our discus-
18 sion last time and seems to be still causing a
19 problem for Mr. DePetris, because we received some
20 additional material on it, without interjecting
21 myself into it, I think that whole problem could
22 be solved very easily if your Honor would grant a
23 motion by me for a severance, in which case the
24 McLean defendant could be tried and Mr. London's
25 representation would not become a part of the matter

1 whatsoever if the Government chooses to use him --
2 if they use him. If not, not. He's not involved
3 in our defense. I am ready.

4 My only suggestion would be if we could get
5 a trial, if not Monday, fairly shortly thereafter,
6 because if it goes beyond a week or so, then I
7 would also have to ask for an adjournment going
8 into the future. I could, if it's not Monday,
9 if your Honor would be ready, let's say, later next
10 week, that also would be acceptable to me.

11 MR. FRIED: Your Honor, the Government's
12 position we would oppose a severance in this case.
13 My understanding of the indictment is that it's a
14 case that should be tried together, a waste of
15 judicial time, effort, to try the case twice. It's
16 a proper joinder under the rules of defense, and
17 for that reason, the Government would oppose
18 granting of any severance.

19 THE COURT: Severance won't solve the prob-
20 lem of Mr. London--

21 MR. FRIED: It would not solve that problem,
22 in addition to the fact this is a proper joinder
23 under Rule 8, I believe.

24 MR. HANDMAN: Might I say also I believe
25 based on what I know now, the Government's case
will be fairly brief. I don't think separate trials

1 will be a time-consuming factor to the Court.

2 I can represent to the Court that our case will
3 not be too lengthy, either. Then, at least, you
4 see, if Mr. London--

5 THE COURT: I'll put it down for April 7th,
6 and everybody ought to be ready then.

7 MR. LONDON: I have a state murder case in
8 which the defendant is incarcerated since September
9 for April 7th.

10 MR. HANDMAN: I take it your Honor is not
11 severing.

12 THE COURT: No, I don't think I'll sever.

13 MR. HANDMAN: In that case, I'll take what-
14 ever date that Mr. London might suggest.

15 MR. LONDON: I would like time to respond
16 to the documents forwarded to me. I have not had
17 an opportunity to examine them at all. I would ask
18 for April 30th. In addition to a chance to respond
19 to that, I have state cases scheduled for the early
20 part of April involving defendants who are incar-
21 cerated. I have the week of April 28th clear ex-
22 cept for that Monday, where I have a case in this
23 court that should be very, very brief. I could
24 start this on the 29th or the 30th.

25 MR. HANDMAN: That date is all right with me,

1 too.

2 MR. FRIED: Your Honor, the Government
3 has no objection. I understand that Mr. DePetrìs is
4 ready for trial in this case and was ready for Monday.
5 In that event, any date you fix is for the convenience
6 of the defendants. We have no objection.

7 THE COURT: I have contemplated starting a
8 fairly long civil case on the 28th. We have Canada
9 in jail awaiting trial.

10 MR. LONDON: That time is credited to her.
11 That's no problem.

12 THE COURT: You're not in jail.

13 MR. LONDON: She's pleaded guilty to a
14 fifteen-year count. I can't say that she should be
15 outraged at this.

16 THE COURT: I'll put it down for April 7th.
17 If you're actually engaged in the Supreme Court,
18 you can come in and file an affidavit. I don't
19 feel that casual about people waiting in jail.

20 MR. LONDON: What I said is not meant to
21 be casual.

22 THE COURT: It sounded like that.

23 MR. LONDON: No.

24 MR. HANDMAN: Might I ask your Honor to
25 direct there be some compliance with my demand.

1 for particulars by a certain date? I have
2 received absolutely nothing.

3 MR. FRIED: I can serve on Mr. Handman
4 right now Mr. DePetris's response and I'll give a
5 copy to Mr. London.

6 MR. LONDON: Thank you, sir.

7 MR. FRIED: I'll hand a copy up to the
8 Court for inclusion in the file.

9 THE COURT: Does this comply? There are
10 a number of items opposed.

11 MR. HANDMAN: Items opposed, I see.

12 THE COURT: Go down to the Magistrate on
13 those items right now and get it cleared up.

14 MR. FRIED: I don't understand your Honor's
15 direction to go to the Magistrate.

16 THE COURT: You're refusing more than half of
17 what's asked for.

18 MR. FRIED: I understand. Mr. DePetris should
19 be entitled to be present if there's any argument.

20 THE COURT: I'm going to refer the open
21 matters to the Magistrate and let him fix a time.

22 MR. FRIED: The discovery motion will be
23 on then before the Magistrate.

24 MR. HANDMAN: That's satisfactory.

25 LONDON: Might I be excused.

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1 THE COURT: Yes.

2 MR. FRIED: Your Honor, under those circum-
3 stances we can mutually contage the Magistrate.

4 THE COURT: Very well.

5 MR. HANDMAN: We'll agree on a time.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

-against- : 74-CR-791

RICARDO INNESS and :
GERTRUDE MC LEHAN, :

Defendants.

-----X

United States Courthouse
Brooklyn, New York

April 7, 1975
10:00 o'clock a.m.

B e f o r e :

HON. ORRIN G. JUDD,

U.S.D.J.

* * *

EMANUEL KARR
OFFICIAL COURT REPORTER

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A p p e a r a n c e s :

DAVID G. TRAGER
United States Attorney
Eastern District of New York

By: DAVID DE PETRIS
Assistant United States Attorney

IRA LONDON, ESQ.
Attorney for Defendant Inness
(Not Present)

HERBERT HANDMAN, ESQ.
Attorney for Defendant McLehan

* * *

1 THE CLERK: United States of America against

2 Ricardo Inness and Gertrude McLehan.

3 THE COURT: Where is the attorney?

4 MR. DE PETRIS: Here is one.

5 THE COURT: Is Mr. London around?

6 THE DEFENDANT INNESS: No, he isn't.

7 THE COURT: I have an affidavit from Mr. London
8 that he will be actually engaged in Kings County
9 Supreme in a homicide that will last a week, followed
10 by another one if that is adjourned.

11 He wants this adjourned to May 2nd because
12 he has a case before Judge Neaher on April 28th.
13 I can't tell how firm Judge Neaher's is at this
14 time.

15 Wait just a minute until I finish on this
16 last one.

17 Are you Mr. Inness?

18 THE DEFENDANT INNESS: Yes, sir.

19 THE COURT: And you are Mr. Handman?

20 MR. HANDMAN: Handman.

21 THE COURT: You represent Miss McLehan.

22 Is she here?

23 MR. HANDMAN: Yes, sir, this is Miss McLehan.

24 THE COURT: Has Avarez been found yet?

25 MR. DE PETRIS: No, your Honor.

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1 THE COURT: What I would be inclined to do
2 is this, set this down for trial immediately after
3 the Cruz case and, well, the case on trial, and the
4 Cruz case, provided that Mr. London is free from the
5 Supreme Court engagement or can be relieved of those
6 matters at that time.

7 MR. HANDMAN: When would that be?

8 THE COURT: Or he withdraws as attorney.

9 I am going to issue a memorandum which will
10 direct that he appear with Mr. Inness after the
11 memorandum is out so that Mr. Inness can consider
12 the effect of the possibility that since he was
13 directed, since Mr. Inness' passport has been
14 surrendered and that Mr. London tell who paid his fee
15 to represent Mr. Caronardo - - and there may still be
16 a question in Mr. Inness' mind whether he thinks
17 Mr. London would be the proper person to represent
18 him, and for that purpose I will put this down for a
19 week from today and see if Mr. London can be free for
20 a few minutes in the early morning.

21 MR. HANDMAN: That is not - -

22 THE COURT: That does not affect Miss McLehan,
23 you are entitled to be here - -

24 MR. HANDMAN: That is not for trial?

25 THE COURT: That is not for trial.

1 MR. HANDMAN: Are you going to set a trial
2 date also, your Honor?

3 THE COURT: No, I am going to provide that
4 this fellow, as soon as the Schwartz and the
5 Cruz cases are completed - -

6 MR. HANDMAN: When might that be?

7 THE COURT: Cruz goes to trial next week, it
8 may be the 21st, if it doesn't it may be earlier.

9 I don't know, I don't have any computer that
10 can tell me that all counsel in any case will be
11 fully available.

12 MR. HANDMAN: Okay, then Miss McLehan need
13 not come on the 14th?

14 THE COURT: No, unless you notify her.

15 MR. DE PETRIS: Thank you, your Honor.

16 THE COURT: You should be back here next
17 Monday.

18 MR. INNESS, THE DEFENDANT: Next Monday?

19 THE COURT: Yes.

20 I will try to get this memorandum out so he
21 has a couple of days to look at it.

22 All right, gentlemen.

23 * * *

24

25

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----x

4 UNITED STATES OF AMERICA :

5 -against- :

6 RICARDO INNESS, :

74 CR 791

7 Defendant. :

8 -----x

9
10
11 United States Courthouse
Brooklyn, New York

12 April 14, 1975
13 10:00 a.m.

14
15 B e f o r e :

16 HONORABLE ORRIN G. JUDD, U.S.D.J.

17
18
19
20
21
22 MICHAEL PICOZZI
23 OFFICIAL COURT REPORTER
24
25

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: CHARLES CLAYMAN, ESQ.
Assistant United States Attorney

- - -

1 MR. CLAYMAN: I am here for the Government.

2 THE COURT: Is Mr. London here?

3 THE DEFENDANT: No. I have to have a meeting
4 with him today so I know exactly what is right.

5 THE COURT: I think the Government is entitled,
6 perhaps not to choose who your counsel cannot be, but
7 at least to know whether you provided the money for
8 him to represent your witness. I wanted him here for
9 that purpose. If he is not here, I will put it over
10 and there are enough cases ahead of you that I will
11 put you over to April 21st. I want you to consider
12 if you did provide the money for that, whether you are
13 going to be prejudiced by having him represent you.
14 I didn't mention that feature of it when you said that
15 you did not feel that you would be prejudiced by his
16 represented Mr. Cortez-Corneda. I will put it over
17 to April 21st.

18 MR. CLAYMAN: May I ask if the defendant has
19 his passport with him?

20 THE DEFENDANT: Anything you want to ask me
21 you can check with Mr. London.

22 THE COURT: Mr. London is supposed to be keeping
23 the passport.

24 MR. CLAYMAN: The order, as I recall, states
25 the passport should be turned over. That's why I

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1 inquire.

2 THE COURT: Did Mr. London give you the passport
3 to bring here?

4 THE DEFENDANT: No.

5 THE COURT: He can't give it out of his posses-
6 sion without an order of the Court.

7 April 21 for all purposes.

8 MR. CLAYMAN: Thank you.

9 (Adjournment taken until April 21, 1975.)

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1
2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

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5 UNITED STATES OF AMERICA, :

6 Plaintiff, :

7 -against- : 74-CR-791

8 RICARDO INNESS and :
9 GERTRUDE MC LENAN, :

10 Defendants.

11 -----X

12
13 United States Courthouse
Brooklyn, New York

14 April 21, 1975
15 10:00 o'clock a.m.

16 B e f o r e :

17 HON. ORRIN G. JUDD,

18 U.S.D.J.

19
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21 * * *

22
23
24 FRANCES S. KARR
25 Court Reporter

1
2 A p p e a r a n c e s :3
4 DAVID G. TRAGER
5 United States Attorney
6 Eastern District of New York7
8 By: BERNARD FRIED
9 Assistant United States Attorney10
11 HERBERT HANDMAN, ESQ.
12 Attorney for Defendant McLenan13
14 By: CARL A. RAPAPORT, ESQ., of Counsel
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THE CLERK: Criminal hearing, United States
of America versus Ricardo Inness and Gertrude McLenan.

MR. RAPAPORT: Your Honor, I am appearing for
Mr. Handman this morning. Mr. Handman is home ill
with the Chicken Pox.

THE COURT: What is your name?

MR. RAPAPORT: Carl A. Rapaport.

Mr. Handman has told me he has submitted a
letter to you with reference to this case and he was
wondering if you reached any decision.

THE COURT: I am going to see what we do in
the case first and Mr. Inness handed up this
affirmation of Mr. London. Mr. London does not
really respond to my direction that he inform me who
has paid his retainer in the Cortez Coronardo matter.

Mr. Fried, what have you to say on that?

MR. FRIED: Your Honor, he has also failed to
respond to your direction concerning the passport on
the first issue. The case is very clear that it is
not within the privilege and I would request that
perhaps a written order from the court - - I think
that was done. In that case I think the only relief
the Government requests since he is unwilling to
disclose that he should be disqualified from
representing the defendant.

1 THE COURT: I have not found any case where
2 a defense counsel in a criminal case was disqualified.

3 MR. FRIED: I have not found anything on that.
4 I extensively researched the issue at one time
5 concerning the requirement of an attorney to disclose
6 who retained him. That issue is clearly satisfied.

7 In this case where it is likely Mr. Inness'
8 testimony could be compelled at the time of the trial
9 I think we have a situation where at this point his
10 refusing to disclose in advance to your Honor,
11 although contempt is not the right word, he is not
12 obeying the Court's direction.

13 I think one remedy should be that this
14 attorney should not be permitted to represent this
15 defendant under the circumstances. It is going to
16 present additional issues if there is a conviction
17 in this case.

18 THE COURT: Mr. Inness, how recently have
19 you seen Mr. London?

20 MR. INNESS: I saw him Friday.

21 THE COURT: And have you reached any conclusion
22 as to whether you want him to represent you if he is
23 going to be a witness for the Government in the case
24 against you?

25 MR. INNESS: I cannot say anything because he

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1 is not here. The fact remains everything has to be
2 said in court anyhow and until I can understand what
3 he is likely to say against me whether I could keep
4 him or get somebody else.

5 THE COURT: I wonder if we could issue a
6 subpoena and serve it on him before Judge Koota so he
7 can be here at 2:00 p.m., a subpoena for 2:00 p.m.
8 this afternoon. He says there may be a disposition
9 in the matter before Justice Koota and he has a jail
10 case to try in Kings Supreme tomorrow morning. That
11 would get him in between.

12 MR. FRIED: I will have a subpoena issued.
13 I will give it to the marshal immediately and set it
14 down for 2:00 o'clock today.

15 THE COURT: Mr. Handman says that the United
16 States Attorney is holding Miss McLenan's seaman's
17 card and that prevents her working on cruise ships
18 which would not go out the United States and it is
19 true she has been ready and it is not her fault that
20 we have been unable to proceed with the case.

21 MR. FRIED: We have not received a copy of
22 that letter, your Honor.

23 THE COURT: It went to Mr. DePetrus.

24 MR. FRIED: Mr. DePetrus is in Washington
25 today. I have his file.

1 MR. RAPAPORT: I sent the letter to Mr.
2 DePetrus, a copy of it.

3 THE COURT: Show it to Mr. Fried.

4 MR. FRIED: Thank you, your Honor.

5 THE COURT: This would be in anticipation of
6 a long adjournment so that Miss McLenan can go on a
7 cruise.

8 MR. FRIED: I understand. My understanding
9 is the Government is ready for trial. Mr. DePetrus
10 expected his case to come in very shortly.

11 THE COURT: If Mr. Inness' situation were
12 plain I would probably go ahead and try it today,
13 but for Mr. London's engagements.

14 MR. FRIED: Which means it is likely this
15 case will probably be on next week. We will resolve
16 Mr. Inness' situation, I am sure, today or tomorrow.
17 Mr. DePetrus will expect to try this case as soon
18 as he finishes the three cases on before your Honor.
19 If this case goes to trial later this week or the
20 beginning of next week I think the extra week the
21 Government would withhold the card would not be
22 unreasonable.

23 THE COURT: This person is not in jail
24 awaiting this case to be tried. I really have no
25 way of knowing whether Mr. London will in fact begin

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1 a trial in Kings Supreme Court tomorrow because in
2 the Cruz case, which was ready for trial this
3 morning, I was told it was on the calendar for
4 immediate trial on April 10 in Kings Supreme and it
5 has not yet been tried.

6 We will see if Mr. London is here this
7 afternoon and can explain these things a little more
8 but I do see some virtue in what Mr. Handman says.
9 What is the possibility of a severance here?

10 MR. FRIED: My understanding is we would
11 oppose it. I am not going to be trying the case,
12 Mr. DePetris will, it is his case. The case is one
13 case and should be tried together.

14 THE COURT: I do not like to keep Miss McLenan
15 coming back indefinitely. I will mark it ready and
16 passed until tomorrow morning.

17 MR. RAPAPORT: Mr. Handman will not be here
18 tomorrow. The doctor told him on Friday he must
19 stay in at least seven to eight days.

20 THE COURT: You think it cannot be tried this
21 week?

22 MR. RAPAPORT: I doubt it, I do not expect
23 him in the office this week. His face is all broken
24 out.
25

1 MR. FRIED: Your Honor, could we set it
2 down for next Monday for a firm trial date with an
3 expectation we will resolve Mr. London's problems?

4 THE COURT: Then we have the problem of Mr.
5 London asserting he has a matter on before Judge
6 Neaher.

7 MR. FRIED: I understand this is not the first
8 time Mr. London has not appeared in court and has
9 handed up these affidavits. The Government is ready.
10 We have witnesses who are being held in jail. We are
11 ready to proceed.

12 THE COURT: Well I cannot force Miss McLenan
13 to trial if her counsel is not available. Will he
14 be available by next Monday do you think?

15 MR. RAPAPORT: I do not know, I hope so but
16 I am not sure.

17 THE COURT: When did the eight days start?

18 MR. RAPAPORT: Friday. It should be eight
19 to ten days.

20 THE COURT: We had better put it down for
21 April the 28th and we will let the subpoena for
22 2:00 o'clock stand.

23 MR. FRIED: Fine, your Honor.

24 THE COURT: You do not have to be here until
25 next Monday.

1 MR. RAPAPORT: Can Miss McLenan get her
2 passport so she can work?

3 THE COURT: I think we ought to give back to
4 her her seaman's card. It does not take her outside
5 the United States, that is if it does not keep her
6 away beyond next Monday.

7 MR. FRIED: I am not familiar with the
8 seaman's card and what it allows or does not allow.
9 If I might be allowed to look into that and report
10 back to the Court at 2:00 o'clock. The other
11 alternative might be a letter from us to you that we
12 have the seaman's card in our possession which we
13 have done in the past and that will be sufficient.

14 DEFENDANT MC LENAN: No, you have to have the
15 seaman's card.

16 THE COURT: Look it up between now and 2:00
17 o'clock and we can reach Mr. Rapaport by phone.

18 * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-against-

RICARDO INNESS,

Defendant.

-----X

74-CR-791

United States Courthouse
Brooklyn, New York

April 21, 1975
(2:00 P.M.)

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

MICHAEL MIELE
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: BERNARD FRIED, ESQ.
Assistant U.S. Attorney

LRA LONDON, ESQ.
Attorney for the Defendant

1 THE COURT: I thought I should get you here
2 now so we would find out whether this case is
3 going on with you as counsel, or with some other
4 arrangements on behalf of Mr. Inness.

5 MR. LONDON: I was served with a subpoena
6 at 12:30 to be here at 2:00.

7 I am due back in Supreme Court at 2:30.
8 I have made arrangements to be delayed.

9 I had no idea why I was being subpoenaed,
10 the subpoena being unusual.

11 There are several issues in my mind which
12 I seriously question and question this proceeding.
13 I do not understand why there is any further pur-
14 suit of my having to give a statement on the record,
15 a statement off the record, or an affidavit, it
16 in that set of circumstances, I am nothing more
17 than an ordinary witness.

18 THE COURT: You were more than an ordinary
19 witness. You were counsel for Mr. Inness. He has
20 a right to know all the facts before he goes ahead
21 with you.

22 You gave me an affidavit that you were
23 actually engaged this morning and you have an EDT
24 at 2:30.

25 MR. LONDON: The case was set from 11:00 to

1 11:30 this morning and over to tomorrow.

2 THE COURT: I talked with Justice Mangano
3 who said you are not engaged before him and
4 Justice Vaccaro who said you will not be reached.

5 MR. LONDON: I received a communication
6 from Judge Vaccaro who said I better be ready.

7 The only issue is whether Mr. Inness wants
8 to continue with me as counsel.

9 THE COURT: No; Issue No. 1 is whether you
10 are going to comply with my order whether you will
11 comply with submitting the passport.

12 MR. LONDON: I will comply with that.

13 All I want is some time on that one case
14 that you are relying on.

15 I think your Honor's interpretation of the
16 facts is more than fair.

17 I am holding that passport for Mr. Inness
18 rather than at the Government's -- as an agent for
19 the Government. I agree with that.

20 I have only asked for time on that. The
21 passport is exactly where it has always been, in
22 my office safe.

23 There is a greater issue, another attorney,
24 if there is going to be one, may want to submit
25 something in opposition to that. If there is going

1 a determination of that, I would simply ask that
2 we meet that issue when and if there is another
3 attorney.

4 May we first go to the issue of counsel?

5 THE COURT: All right.

6 Now, with respect to that, you said you
7 didn't know where Mrs. Cortez Conada's statements
8 came from. She appeared before me on October 16,
9 1974, and she stated she had written Mr. DePetrus
10 that she wanted to cooperate and didn't want the
11 attorney to know.

12 She wanted another attorney and was advised
13 of her constitutional rights there. She came
14 before me in the afternoon and said that you came
15 and said you would represent her.

16 She hadn't asked for a new lawyer, she didn't
17 pay you and doesn't know who paid you.

18 Coupling that with the timing of Mr. Inness'
19 State arrest, it seems to me it was sufficient to
20 justify the Government's request that you inform
21 him of the course of his retainer.

22 If you don't want to do it until you are
23 called as a witness, that is your privilege. I
24 don't think I can accept an in-camera statement
25 about it because if somebody else paid you, the

1 Government may have a right to inquire what that
2 other person's interests in the matter was.

3 MR. LONDON: This issue was originally
4 discussed by your Honor at the arraignment when I
5 said I know of no procedure where a witness in a
6 Federal trial can be compelled to submit an affi-
7 davit of his prospective testimony.

8 I wouldn't ask the Government to give me
9 affidavits of their witnesses' prospective testimony.

10 THE COURT: I wouldn't permit an assistant
11 U. S. attorney, who represented a defendant be-
12 fore he was appointed, to appear before me.

13 You are asking for rights in behalf of a
14 defendant that would be more than would be given
15 to a prosecuting attorney.

16 MR. LONDON: Mr. Inness' position as of
17 today, as he related to me, is that he wishes me to
18 continue as his counsel, but he is very distressed
19 at the Court's constant questioning of me.

20 He feels that the Court has indicated that
21 it has made up its mind as to certain facts in
22 this case because above all, and it sometimes
23 takes a lay person to point this out, Mr. Inness
24 pointed this out, he said assuming that someone
25 other than Mrs. Conada paid my fee to represent her,

1 that doesn't lead to any conclusion that that person
2 was involved in a criminal conspiracy. As your
3 Honor well knows, having practiced law, you are
4 not always paid by the party in interest.

5 Your Honor's questioning seems to indicate
6 that whoever paid me is guilty.

7 THE COURT: No. The question who paid you
8 is a factor in the case.

9 MR. FRIED: I can give you verse and chapter
10 here.

11 I recently had an identical matter before
12 Judge Mishler, U. S. v. Tombinne, et al, 73 CR 601.

13 At that time during the course of the proceed-
14 ings we had a defendant in a similar situation who
15 indicated that an attorney had appeared in her
16 behalf and we had no idea --

17 MR. LONDON: Can I interrupt?

18 There is a different factor here. I did
19 appear for Miss Conanda, she represented me as her
20 attorney on the record.

21 She thereafter becomes a Government witness
22 and denies what she said previously. I didn't re-
23 present --

24 THE COURT: What did she deny --

25 MR. LONDON: She said she never wanted me to

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1 represent her.

2 THE COURT: No. She said she wanted to
3 cooperate with the Government and not to have
4 you informed about it.

5 MR. LONDON: As a result of the remarks to-
6 day, I feel seriously jeopardized in my represent-
7 ing Mr. Inness.

8 I don't think that I can be the subject
9 of personal questions and then turn in my roll and
10 represent him.

11 Whether he does wish me to continue -- well,
12 he has told me that. I don't know whether I wish
13 to continue any more.

14 I don't want to be in a position where
15 someone is pointing a finger at me. I know all
16 the thoughts a prosecutor has. I don't like to
17 ever walk in a Courtroom and feel that my ethics
18 are in question, because that has to diminish
19 the usual zealousness in the art of which I repre-
20 sent defendants.

21 I am very distressed over a lot of things in
22 this case. I think the U. S. attorney's office,
23 and not Mr. Fried, he's new, I don't even know if
24 he is assigned to this case -- if we look back
25 over this case, Mr. DePetrinis' ethics in my mind

1 are seriously questionable in view of the fact,
2 he thinks nothing of coming to your Honor and
3 making an ex parte application to you.

4 THE COURT: You are referring to the fact
5 that he thought I should request the surrender of
6 the passport.

7 MR. LONDON: Your Honor, I don't think --

8 THE COURT: Didn't you come --

9 MR. LONDON: I found out at 5:30 and com-
10 municated with you.

11 THE COURT: I arranged for the passport to
12 be deposited with you.

13 MR. LONDON: You did not. You reinstated
14 your original order which said I was to retain
15 the defendant's passport.

16 Thereafter you, on application of Mr. DePetris,
17 changed that order.

18 The magistrate called me and notified me.
19 I called your Honor --

20 THE COURT: I don't recall any provision
21 about the passport at the original record.

22 MR. LONDON: I stated I would retain it.

23 MR. FRIED: I requested that the Court order
24 that passport be surrendered and your Honor felt
25 at that time that there might not be proper authority

1 A 37
2 to do so.

3 I referred you to the case, the name in
4 this Circuit, dealing with passport. You directed --

5 THE COURT: That was on February 5th.

6 On January 31st, I think nothing was said
7 about the passport. It was an oversight.

8 MR. LONDON: The passport is in my office
9 safe. I checked it Friday and it is in the same
10 condition.

11 That isn't the problem.

12 I think the question is whether I, on my
13 own say-so, should continue in this case. I am
14 beginning to find that my representation of
15 Mr. Inness is diminished as the Constitution sees it.

16 I don't have my office file with me.
17 I was working on a brief. There is a leading
18 case, U. S. v. Bynum, in the Circuit Court.

19 I spoke to the attorneys involved, Evseroff
20 & Newman.

21 Apparently the same issue was raised there.
22 Mr. Evseroff had represented the leading Government
23 witness.

24 The Second Circuit Court of Appeals ruled
25 that this did not create any legal impediment.

 I spoke to Mr. Evseroff and he assured me

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1 that the facts were similar to the facts in this
2 case, after my having related to him the problem
3 in this case.

4 I have a situation in the Federal Court,
5 Southern District, before Judge Pierce, and if
6 your Honor feels that it may be of some value, you
7 can call him.

8 In that case I am the incoming attorney.
9 In that case a defendant became a Government witness.
10 One attorney represented a co-defendant and the
11 Government witness.

12 He thereafter asked to be continued as
13 counsel for the remaining defendant.

14 The Court said, "No, you may not represent
15 him any more. He must get a new lawyer."

16 The defendant came to me. I am now repre-
17 senting him.

18 Judge Pierce, after two months, called us
19 back in and stated that he had second thoughts
20 about what he had done and wanted to know whether
21 the defendant, now represented by me, wishes to
22 continue with his original counsel.

23 I fdon't know what cases the Judge looked
24 up to reach that conclusion because the issue
25 turned on something else.

1 THE COURT: The Court of Appeals in the
2 Alberti case in 470 Fed. 2d 881, where there was
3 a potential conflict of interest between defend-
4 ant's retained counsel who had represented the
5 Government witness, , "This District Judge
6 should conduct a hearing to determine whether
7 there exists a conflict of interest with regard
8 to the defendant counsel such that the defendant
9 will be prevented from receiving advice and
10 assistance sufficient to afford him the quality
11 of representation guaranteed by the Sixth Amendment.

12 "In addition, the Trial Judge should see
13 that the defendant is fully advised underlying the
14 potential conflict and is given an opportunity
15 to express his or her views."

16 The question of the source of the other
17 retainer was not involved in those cases.

18 MR. FRIED: The question of source and
19 retainer had been involved in variety of cases.

20 Judge Mishler recently ruled that it is
21 proper for the Government to inquire into who had
22 retained a law firm, the address of the person who
23 had made a promise to pay the fee, did the defendant
24 have anything to do with the retainer, did another
25 individual have anything to do with the retainer,

1 and if the answer is in the affirmative, what did
2 such individual have to do with the retention.

3 The subpoena was quashed there because
4 Judge Mishler wrote in his opinion that the indict-
5 ment had come down at the time of the Grand Jury
6 proceeding on the subpoena against the lawyer, was
7 pending and he felt it was an improper use for
8 the Grand Jury to develop evidence for trial.

9 These questions of identity of who paid
10 the retainer are without the scope of the attorney-
11 client privilege.

12 MR. LONDON: Assuming all the answers are
13 in the positive, are the answers relevant to this
14 prosecution?

15 THE COURT: One of the points that occurred
16 to me is perhaps if you are to be a witness in
17 this subject, it should be out of the presence
18 of the Jury so there is no prejudice.

19 MR. FRIED: There are cases on that.
20 Courts have generally found it to be not the best
21 procedure for the prosecutor to call as a witness
22 during the trial, the defendant's very counsel.

23 In this situation where there is a possibility
24 at this posture that Mr. London could be a witness
25 for the Government, the Government is put in the

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1 situation during the course of the trial to make
2 a decision whether or not they want to risk an
3 appellate censure.

4 If we know in advance the answers to the
5 question, it is resolved. That is the proper
6 procedure to be followed.

7 This is not an ordinary witness who, in
8 advance, we are seeking disclosure. It is a special
9 situation because the defendant's counsel's
10 constitutional rights are interwoven with the
11 Sixth Amendment and that is why we are using this
12 procedure.

13 THE COURT: I am whipsawed to an extent.

14 If I let Mr. Inness proceed and counsel
15 on appeal finds some new fact, he may allege.
16 that he doesn't -- he didn't have effective repre-
17 sentation of counsel.

18 If I direct that you not act for him, I
19 may be depriving him of counsel of his own choice,
20 although the Courts have said the right to permit
21 particular counsel is not an absolute right.

22 They have done that primarily on attempts
23 to shift counsel at the last minute.

24 MR. LONDON: I have suggested at every
25 stage of this proceeding that your Honor take

1 an in-camera statement from me under a sealed
2 record asking me whatever questions it is that
3 might arise.

4 It seems to me to determine do we have a
5 real issue and the defendant is safeguarded because
6 your Honor is not going to reveal the answers,
7 but at least we can go intelligently.

8 I don't know what the law is because un-
9 fortunately there isn't a case on all fours with
10 this.

11 As much as I would like to think so and
12 the prosecution would like to think so --

13 THE COURT: All right.

14 Well, let me go on.

15 I held a hearing in the Valderiz case
16 where two brothers wanted to be represented by
17 the same attorney where one testified he did not,
18 which is the same as in DePerry, there the Court
19 of Appeals affirmed and said, "The defendants,
20 as well as their attorney, were fully advised of
21 the facts underlying the potential conflict and they
22 cannot repudiate their choice in the absence of
23 showing an interest."

24 I talked to Mr. Inness at an earlier stage
25 before I wrote my memorandum with respect to the

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1 right to hold the passport and with respect to
2 the right to inquire as to the source of the
3 retainer.

4 I feel he should make -- give up an oppor-
5 tunity in the light of those additional facts.

6 Now, Mr. Fried wanted to say something
7 about the suggestion of an in-camera submission.

8 MR. LONDON: I mean with no one else present,
9 just your Honor and myself, and the stenographer.

10 MR. FRIED: If this witness or the defense
11 counsel, Mr. London. is in fact the witness at
12 trial, the Government will be whipsawed at trial
13 because we won't know whether we should call him
14 because of the dangers --

15 MR. LONDON: You wouldn't know anyway.

16 MR. FRIED: If you do it in-camer, we will
17 have no idea and your Honor is not familiar with
18 these facts to determine whether the retention is
19 the relevant evidence for the purpose of the trial.

20 We should know that far in advance of --
21 whether or not Mr. London represents this defendant.

22 MR. LONDON: That argument is species.

23 Assuming I walk out of this case now and Mr. Inness
24 has John Smith representing him.

25 The still wouldn't know that. I won't come

1 forward and give it to him unless the Judge
2 directs me and you can only direct me on trial.

3 MR. FRIED: We could call Mr. Inness to
4 the stand -- I'm sorry, Mr. London go the stand
5 and ask him those questions, if he refused to
6 answer would be another question.

7 MR. LONDON: You wouldn't know the answers
8 also to the questions.

9 THE COURT: I have -- there was an arrest
10 of Mr. Inness in August of 1974. I don't have
11 the date of the arrest, and I don't have a copy
12 of the complaint.

13 MR. LONDON: The State arrest.

14 THE COURT: Yes.

15 MR. LONDON: I don't have my file but I
16 was going to furnish you with a photostatic copy
17 on that. I will do that tonight.

18 There was no drug charge, I can assure
19 your Honor of that.

20 I have advised the Court as to what happened.

21 THE COURT: Mr. DePetris said he was one
22 of five people found in possession of one pound of
23 cocaine.

24 MR. LONDON: That is completely erroneous.
25 Knowing Mr. DePetris, he said it in error rather

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1 than any other purpose.

2 THE COURT: Have you any background on it?

3 MR. FRIED: No.

4 MR. LONDON: If you want to know the facts
5 of that, I will state them. It's a matter of public
6 record.

7 The defendant was arrested with five other
8 men. Of the five men, four had no criminal re-
9 cords whatsoever.

10 Mr. Inness being one of the four.

11 The police in charge of the arrest attempted
12 to charge all five defendants with possession of,
13 I believe it was, methedone -- list as a controlled
14 substance.

15 THE DEFENDANT: A small box, a cigarette
16 box. That's all it was.

17 MR. LONDON: Thereafter, the fingerprinted
18 the five defendants, and on the fingerprint record
19 indicated all five would be charged with the
20 Public Health Law or Penal Law on controlled
21 substances.

22 Upon preparing the complaint in the Criminal
23 Court, the district attorney realized there was no
24 evidence against four of the defendants because
25 the dangerous drug was not in their possession nor

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1 any place near them.

2 Given all inferences to the D.A., he de-
3 cided they could not be charged with any violation
4 of the narcotic laws.

5 So the four defendants, Mr. Inness was
6 one, were charged with the various crimes associated
7 with disorderly conduct, assault on a policeman,
8 etc.

9 The matter went to a felony hearing. All
10 of the charges at the felony hearing were reduced;
11 however, the fifth defendant's case went to the
12 Grand Jury on the drug charge and for an orderly
13 procedure, they sent all the cases to the Grand
14 Jury.

15 The Grand Jury filed informations against
16 four defendants again with no drug charge. If
17 there was any evidence that any of the defendants
18 could possibly be charged with drugs, the Grand
19 Jury knew they could have done it and they did not.

20 The cases is now awaiting trial and the
21 trial is held up because one of the two officers,
22 and this is what my investigation indicates, is
23 being investigated. Not just because of this arrest.
24 Apparently they have been involved in many false
25 arrests concerning drug crime.

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1 But again, it would have nothing to do with
2 Mr. Inness.

3 THE COURT: What was the date of that arrest?

4 THE DEFENDANT: August 10th.

5 MR. LONDON: Are you certain of that date?

6 THE DEFENDANT: Yes.

7 MR. LONDON: What has confused the U. S.
8 attorney is on his arrest record, it indicates a
9 dangerous drug arrest but never prefected by
10 complaint or subsequent charge.

11 They persist in presenting this defendant
12 to the Court as a previous drug violator.

13 I don't say they do this in any design but
14 they should be more scrupulous in their presenta-
15 tion of facts.

16 THE COURT: I have still not found authority
17 that I think justifies me in removing an attorney
18 for a criminal defender.

19 I am back to the idea that the defendant
20 with knowledge of all the facts must make up his
21 own mind.

22 MR. LONDON: May I ask you a direct question?

23 Does your Honor feel that my legal ethics,
24 notwithstanding my lack of membership in the
25 Brooklyn Bar Association of which I take personal

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1 offense, because I am a member of many bar asso-
2 ciations that doesn't have to be close to my heart,
3 does your Honor feel in your wisdom that I am
4 compromising any of the canons in continuing to
5 represent Ricardo Inness?

6 THE COURT: I said in my memorandum that
7 this case was not on all fours with the Brooklyn
8 Bar Association opinion.

9 I mentioned you are not a member because
10 you are not really bound by it. I don't know if
11 members are bound by it. I couldn't say on the
12 present facts that you are guilty of any violation
13 of legal ethics.

14 MR. LONDON: That was my belief. I have
15 never been accused of violating legal ethics
16 and wouldn't want to be in the position of being
17 told you are violating.

18 Well, I take it your Honor wishes to direct
19 a question to Mr. Inness.

20 THE COURT: Mr. Inness, you have heard all
21 this.

22 THE DEFENDANT: But a lot was said over my
23 head. It still leaves me listening.

24 He is a lawyer of my choise.

25 Now I understand who is the Judge and who

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1 is the prosecutor.

2 Now, today we have an argument.

3 Now, I feel much better because I feel I
4 know what is going on.

5 THE COURT: Previously I had not determined
6 there was a right in the Government to require
7 Mr. London to disclose who paid his fee for repre-
8 senting the witness Cortez Conada.

9 Now that there is that potential, you may
10 know what the facts are.

11 You want to decide now or do you want to
12 decide tomorrow on it?

13 THE DEFENDANT: I will have to have some
14 time. I think I know what it is all about but
15 when you start quoting different things, they are
16 legal terms.

17 THE COURT: With respect to the memorandum,
18 I intended to say that the discovery motion was on
19 behalf of the defendant McLellan and there is a
20 determination.

21 MR. LONDON: That is a complete mystery to
22 us.

23 THE COURT: No. The Court file shows there
24 was a memorandum issued by the Magistrate and it
25 says copies to all counsel.

1 MR. LONDON: I never got it. It is my
2 feeling that where there are co-defendants, the
3 Government is under obligation to notify us of
4 any proceeding because there they would be violating
5 the defendant Inness' constitutional rights by
6 not having him represented at an important stage
7 of the proceedings.

8 THE COURT: Apparently they were directed
9 to the U. S. attorney and not to you.

10 MR. LONDON: I don't know why Mr. Fried
11 didn't inform me they were appearing before the
12 Magistrate to argue.

13 MR. FRIED: The government has no obligation
14 to notify counsel when it is not his discovery
15 motion.

16 What happened is this was set on a Friday
17 before your Honor and Mr. DePetrus referred the
18 matter to the Magistrate and the Magistrate held
19 a hearing the following Monday with Mr. Hanlon
20 and Mr. DePetrus concerning the other co-defendant.

21 A Memorandum was filed by Magistrate Schiffman.
22 I have a memorandum saying "CC All Counsel." I
23 have no knowledge why a copy wasn't sent by the
24 Magistrate other than by the U. S. attorney's office
25 to Mr. London.

THE COURT: The memorandum of the Magistrate

is not completely enlightening. Would you let Mr. London look at that. You would need the motion papers and the Government's response in order it interpret it fully.

MR. FRIED: - There is no requirement under the rules requiring discovery by one defendant --

THE COURT: No, normally defense counsel cooperate to some extent.

MR. FRIED: I ask since the issue of representation is not resolved, since defendant through counsel indicated they wish some further time to discuss it, that it be made a part of this hearing to make this defendant aware that Mr. London is potentially a witness who could be called during the trial that he will be the defendant in. That's an additional problem he should weigh in advance.

THE COURT: That's what may have gone over his head. That's what I thought might lead to a claim.

MR. LONDON: I don't think it did because the defendant's position is that the Government is attempting to intimidate him into firing me. That's his personal privilege, he told me. I may

be --

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2 THE COURT: That's a relevant statement.
3 I have said he has no duty to fire you. I want
4 to be sure he knows the risks he runs and I am not
5 going to determine fully at this stage what I will
6 do with respect to any disability of the Government
7 to call you. I think if you are a relevant
8 witness and you know about it beforehand that
9 inhibition may not apply.

10 MR. LONDON: The Government by my view --
11 I won't make that statement. I have just felt at
12 least if your Honor knew of the factual situation
13 that I would be compelled to testify and knew the
14 answers, that we could have a more intelligent
15 decision here. I am anxious for your Honor, if
16 nothing else than to personally advise me, "Mr.
17 London, because of your testimony --"

18 THE COURT: If you take another ten minutes,
19 I will take a statement in camera on it.

20 MR. LONDON: If you have misgivings I
21 don't want to pursue it.

22 THE COURT: Whether this is an adequate
23 way to deal with the matter. I can't really rule
24 on a request by Mr. Fried on the basis of in
25 camera testimony that I am not going to disclose

1 to him. That's my problem.

2 MR. LONDON: I hadn't thought of that. I
3 ask for April 30th or May 1st for these issues,
4 that's next Wednesday or Thursday. I expect to
5 be on trial before Judge Neaher that whole week.
6 Carol Amon --

7 MR. FRIED: Is that the case --

8 MR. LONDON: She is going to give it to
9 someone else to try.

10 From the way things go in this courthouse,
11 I will have time on any of those days to spend
12 time before your Honor and resolve these issues
13 and it will give me an opportunity to at least go
14 with the defendant to another attorney and consult
15 with him to get a fresh outlook. I am personally
16 involved in this. I don't know if I am in a
17 position to see this objectively.

18 THE COURT: You can disclose facts to that
19 attorney and won't embarrass me if I knew them
20 and couldn't tell the Government about them.

21 MR. LONDON: I began to feel I am a
22 target and the Government wants me out at any cost.

23 THE COURT: Frankly, what troubles me is
24 whether the -- your retainer to represent Mrs.
25 Cortez Conada, having come after Mr. Inness's

4 1 arrest, whether your retainer was engineered by
2 him and whether that may be a relative factor on
3 the conspiracy.

4 MR. LONDON: If your Honor determined it
5 was not engineered by him, I take it it would have
6 no relevance at all to this indictment.

7 THE COURT: I shouldn't determine ex parte.
8 I will put it down for -- why can't I put it down
9 for 2:00 o'clock on the 28th?

10 MR. LONDON: We expect to start trial then
11 and I have an arraignment before another Judge on
12 a case transferred by one Judge to another. I
13 don't know how much time I will have that day. Any
14 other day is fine.

15 MR. FRIED: You asked me to look into the
16 question of the co-defendant. According to the
17 Immigration and Nationalization Service and the
18 DEA agent, that card is used in lieu of a passport
19 by merchant seamen and you can travel in and out
20 of the country.

21 THE COURT: That's another problem. We
22 have a co-defendant whose occupation as a cruise
23 attendant is in jeopardy because her seaman card
24 has been deposited. She wants it back so she can
25 go to cruises partly -- Mr. Fried says it is the

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equivalent of a passport and needed it --

MR. LONDON: If I am relieved, he will have 30 days in which to retain new counsel. In state court it is 30 days. Assuming you shortened it, I think as a practical matter it would be 30 days. Either way Mr. Fried has problems in that. I don't know whether I am going to be out of this case or not. I don't want to try it with the feeling I am a target of anything.

THE COURT: I can't guarantee that you are not a target of the Government. You are not a target of mine, I am adjudicating things.

MR. LONDON: Any day after the 20th.

MR. FRIED: Could we set it down on Friday afternoon?

MR. LONDON: I think the defendant should have a little time.

THE COURT: If you are not going to trial tomorrow before Judge Vaccaro --

MR. LONDON: Judge Koota is continuing at 11:30 on the other case that I went on today. It should result in a disposition. It is possession of a dangerous weapon in a car. It is the type of case that lends itself but they are adamant.

THE COURT: I will put it down for 2:00

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o'clock on Friday.

MR. LONDON: That is perfect. I have a sentence in this court 2:00 o'clock on Friday.

THE COURT: Come up as soon as that is over. Maybe before.

MR. FRIED: -The Government resents any implications that the suggestion is that Mr. Inness is being compelled to new costs to fire his attorney, that certainly what we have in mind and I don't think I need say anything further in that.

MR. LONDON: Why hasn't the Government called me up as a brother attorney and said to me, as I would if I were the prosecutor, "Mr. London, come down, let's talk as attorneys and let's determine whether there is a conflict here." That's not been done. It's been in a very inquisitorial manner by the Government. I don't agree with your statement that you have not intended that result.

THE COURT: Let's not worry about that, I will see you at 2:00 o'clock on Friday. I have asked Mr. Silverman to prepare for you minutes of Mrs. Cortez Conada's appearance for substitution of counsel and you will be --

MR. LONDON: I was never aware of that. I was never notified until I called Mr. DePetris

1 asked him when was it coming up for sentence.

2 Again, there are many facets -- that doesn't seem
3 to jive. Mrs. Conada today is saying she didn't
4 know why I was her lawyer. If that's her position,
5 why didn't she say before, your Honor, when she
6 pleaded guilty. I know I spent, I think, close to
7 six hours that day. In this courthouse or the day
8 before and at no time did she say to me, "I don't
9 want you."

10 THE COURT: What day was that?

11 MR. LONDON: I had --

12 MR. FRIED: She plead guilty on September
13 19, 1974.

14 THE COURT: This was a month later.

15 MR. LONDON: I resented the implication by
16 your Honor reciting the facts what she said is a
17 fact.

18 THE COURT: One of the other problems is
19 what Judge Weinfeld said, "The courts cannot inquire
20 whether there has been confidential information
21 obtained." It is in 478571. It says, "The court
22 need not and could not inquire whether in fact
23 confidential information passed from the defendant --
24 from the witness to the attorney."

25 MR. LONDON: That's going to be a trial

1 issue. If a factual question is asked, "You have
2 had more than one attorney," the answer to that
3 would be yes.

4 THE COURT: Maybe at the trial, she would
5 waive her privilege. Certainly she could be asked
6 on the trial, "Have you told both your attorneys
7 or all three attorneys the same set of facts as to
8 your involvement in this matter?" I know the
9 answer to that but --

10 All right, good afternoon.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

against :

RICARDO INNISS and : 74 CR 791
GERTRUDE MC LENAN,

Defendants
:

-----x

United States Courthouse
Brooklyn, New York

April 25, 1975
2:00 p.m.

B e f o r e :

HONORABLE ORRIN G. JUDD,

U.S.D.J.

SHELDON SILVERMAN
Acting Official Court Reporter

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Appearances:

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By: DAVID A. DE PETRIS, Esq.
Assistant U.S. Attorney

IRA LONDON, Esq.
Attorney for Defendant Inniss

By: PHILIP PELTZ, Esq., of counsel

HERBERT HANDMAN, Esq.
Attorney for Defendant McLanan
(Not present)

1 THE CLERK: Criminal cause, United States
2 against Ricardo Inniss and Gertrude McLenan.

3 THE COURT: Where are the lawyers for the
4 defendants?

5 MR. DE PETRIS: How are you, Judge.

6 (Both defendants approach the bench.)

7 THE COURT: We have Mr. Inniss and Miss
8 McLenan.

9 Mr. Innis, I haven't got any answer from
10 Mr. London's office right now, and I don't see him.
11 Is he going to represent you?

12 DEFENDANT INNISS: He's due to be here any
13 minute now.

14 THE COURT: Is he going to represent you
15 or bow out?

16 DEFENDANT INNISS: When he gets here--

17 THE COURT: All right.

18 I don't see Mr. Handman or the man who was
19 here last week. Mr. Rapaport was here last week.

20 DEFENDANT MC LENAN: I would like to change
21 Mr. Handman. I don't want him to represent me any
22 more.

23 THE COURT: You're on the eve of trial. You
24 can't change lawyers on Friday for a Monday trial.

25 DEFENDANT MC LENAN: Your Honor, I don't

1 feel he's qualified to defend me. This is not a
2 picnic. This is jail. I don't think he's quali-
3 fied. Your Honor, I gave him \$7,500 and he refused
4 to give me a receipt.

5 DEFENDANT INNISS: He charged me \$10,000.

6 THE COURT: That's a lot of money--

7 DEFENDANT MC LENAN: He charged me \$10,000
8 and I gave him \$7,500 and he refused to give me a
9 receipt. Even if he's willing to give me one,
10 I don't want him.

11 THE COURT: I thought he was going to be here
12 at ten o'clock on Tuesday with you to let me know
13 about your seaman's card.

14 DEFENDANT MC LENAN: You have it.

15 THE COURT: Yes, we have it. How recently
16 have you been in touch with Mr. Handman or Mr. Rapa-
17 port?

18 DEFENDANT MC LENAN: I heard from Mr. Handman
19 a day last week. I think Wednesday, and I haven't
20 heard from him again.

21 THE COURT: I'm going to keep this case
22 scheduled for trial on Monday and we'll see what we
23 do then. I also have another case scheduled for
24 trial. One of them will go on. This one ought to
25 because we have a witness in jail.

DEFENDANT MC LENAN: Your Honor, a client

1 and a lawyer are supposed to have some kind of
2 relationship. We haven't got any.

3 MR. DE PETRIS: Your Honor, I have witnesses
4 who will be coming in from rather long distances.
5 Should I anticipate not bringing them in to see
6 what happens on Monday?

7 THE COURT: Do you have a first witness who
8 is near by and can the others be brought in on two
9 hours' notice?

10 MR. DE PETRIS: Yes, I suppose so.

11 THE COURT: Let's figure on having openings
12 and selection of a jury and openings on Monday
13 and one witness, if possible.

14 MR. PELTZ: May it please the Court, we have
15 been able to reach Mr. London's office. Although
16 he was not there, he does have the Inniss case
17 diaried for Monday morning. His office would
18 ask if I would stand in and relate back to him any
19 communications from the Court.

20 THE COURT: He was supposed to be here at
21 two o'clock this afternoon with authorities to
22 support a motion to reconsider my direction that
23 he produce Mr. Inniss's passport.

24 MR. PELTZ: I don't understand it either.
25 It's not at all like the Mr. London I know.

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1 THE COURT: I don't know why he waits until
2 after a matter is decided to give me authorities
3 on it.

4 MR. PELTZ: I will certainly indicate your
5 Honor's lack of displeasure on his failure to appear.
6 He's to be ready to open and select a jury.

7 THE COURT: And open Monday morning at ten
8 o'clock. He told me he was going to consult with
9 other attorneys this week concerning the responsi-
10 bilities in his case and whether he would represent
11 Mr. Inniss or somebody else would. The problem
12 Mr. Inniss has paid him.

13 I'll ask you people to stay here for a half
14 hour, see if Mr. London shows up.

15 Mr. Handman has put in an appearance for
16 you. I can't relieve him without him being here.

17 DEFENDANT MC LENAN: I have been to other
18 lawyers. They don't charge me money to accept this
19 case.

20 THE COURT: You can't get lawyers on the
21 eve of trial. The time to do that is before.
22 Mr. Handman has represented to be ill this week.
23 Apparently he did talk to you.

24 DEFENDANT MC LENAN: Last week.

25 THE COURT: I'll hear you on Monday morning

1 about it. Stay here and see what happens.

2 DEFENDANT MC LENAN: Thank you.

3 (Recess)

4 MR. LONDON: Let me apologize to the Court.

5 As I told you, I was in County Court in
6 Mineola. Everything went beautiful and I was head-
7 ing here at one o'clock and it's a forty-minute
8 ride until I hit the Brooklyn-Queens Expressway.
9 I had to get off the expressway and fight my way
10 through the traffic. I never intend to keep this
11 Court's business by lateness. You know I'm never
12 late.

13 THE COURT: You were going to tell me this
14 afternoon what cases you had to upset my determina-
15 tion that the passport should be made available.

16 MR. LONDON: I think I can do. Mr. DePetris,
17 who has not been here, whom I have known for quite
18 a few years, tried cases against, and I have finally
19 spoken as general lawyer to, general lawyer, and I
20 think we can resolve all the issues in this matter.
21 I've had a chance to research your passport cases,
22 and I must say that they're irresistible as to the
23 conclusion. I will therefore turn the passport over
24 to the Court with one request: that the passport
25 not leave the court's jurisdiction, that Mr. DePetris

1 be permitted to make as many photostats as he
2 wishes, but the Court maintain the integrity of the
3 passport.

4 MR. DE PETRIS: I'm not exactly sure what that
5 means.

6 THE COURT: Is that what you mean? I con-
7 sider it might be safer in the Clerk's office as
8 part of the security for Mr. Inniss--

9 MR. LONDON: That's what I'm asking for.

10 THE COURT: For his remaining here.

11 MR. DE PETRIS: I do intend to use it at
12 trial.

13 MR. LONDON: For preparation for trial you
14 need photostats.

15 MR. DE PETRIS: That's all.

16 THE COURT: It may have to go over-- The
17 photostat could go over to the Court of Appeals
18 should there be a conviction on appeal.

19 MR. LONDON: On the negotiation, I think
20 I have resolved that issue. Have I, your Honor?

21 THE COURT: Yes.

22 MR. LONDON: On the next issue of conflict,
23 Mr. Inniss and I have had extensive meetings, as a
24 result of which Mr. Inniss will advise the Court
25 himself that he wishes me to continue as counsel.

1 Before that's done, I wish to bring another case
2 to your Honor's attention. People v. Wilkins, 320
3 N.Y.Supp.2d 8 (1971) case.

4 THE COURT: What court?

5 MR. LONDON: Oh, dear--

6 THE COURT: We'll get it.

7 MR. DE PETRIS: Either a Supreme Court--

8 THE COURT: Could be Court of Appeals.

9 I don't know.

10 MR. LONDON: The issue in that case was very
11 similar to what we have here. There were two Legal
12 Aid lawyers from the same Legal Aid office repre-
13 senting the complainant and chief prosecution
14 witness and the other Legal Aid lawyer from the
15 same office representing the defendant.

16 The Court held as-- I really should have
17 said at the outset, it offended me personally.
18 That's why I had a slight hostility towards Mr.
19 DePetrus's office which no longer exists. The
20 Court said unless we presume two attorneys from
21 the same office are going to violate the canons of
22 ethics and exchange information, there is no vio-
23 lation.

24 Well, you have to presume that, really,
25 to presume that I would reveal anything that the

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1 complainant, Government witness in this case,
2 has told me.

3 THE COURT: It's not conclusive. Did we
4 presume it here to the extent Legal Aid in this
5 court will not represent any related defendant,
6 even though they are different lawyers?

7 MR. LONDON: The only point of that case is
8 that where an attorney follows his canons and observes
9 them as-- well, I really think any trial attorney
10 with any experience would, there is no violation.

11 I know that I can't reveal anything she's
12 told me. In fact, just in preparation of today,
13 I went through the file that I had on it. It hit
14 me that the main thrust of the prosecution's
15 charge involving Mr. Inniss does not relate to the
16 case in which I represented Miss Canate. I repre-
17 sented her on the second importation. The first
18 alleged importation is the one Mr. Inniss is
19 involved with, although there is an overall
20 conspiracy.

21 THE COURT: I see.

22 MR. LONDON: In any event, I discussed it
23 with Mr. DePetrus in the hall, and Mr. Inniss will
24 assure the Court that he does not intend to use
25 the potential conflict as any source for disqualify-

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1 ing me as his attorney.

2 There are some other collateral--

3 THE COURT: I have the Wilkins case. It is
4 the Court of Appeals. I could distinguish it
5 because it wasn't as unknowing representation
6 during the preparation of the appeal, Legal Aid
7 discovered that one of their attorneys had repre-
8 sented the complaining witness in an unrelated
9 criminal proceeding; but also it distinguishes
10 between Legal Aid associates who are not exactly
11 a partnership and members of a law firm where they
12 do impute knowledge.

13 MR. LONDON: As to the collateral issue
14 of the fee, I will sit down with Mr. DePetrus and
15 discuss that with him informally. I think we can
16 resolve that. I do not wish at the trial of this
17 matter to bring to the attention of the finders
18 of fact that I at one time represented the Govern-
19 ment witness. I think it's irrelevant and I think
20 it would be prejudicial. I will sit down with
21 Mr. DePetrus to determine whether what he has said
22 he wished to call me for, he does wish to call me.

23 MR. DE PETRIS: I don't know what the answers
24 to my questions would be, so I won't know until
25 after Mr. London and I have sat down.

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MR. LONDON: I don't think without knowing

the answers he would call me.

THE COURT: I am sure he trusts you to give honest answers. I might not let him question you in the presence of the jury until I know what the answers are going to be.

MR. LONDON: We do run into this issue: assuming what I told Mr. DePetrus he found valuable to the Government case, would it be admissible? Would a hearsay statement by a third party to me be admissible in this case?

THE COURT: It might not. It might be the source of other information.

MR. LONDON: That's right.

THE COURT: I don't know what you're talking about.

MR. LONDON: I wouldn't mention specifically. Is the payment of a fee to a lawyer admissible to show conspiracy?

THE COURT: I think the cases I cited indicated it might be,

MR. LONDON: I don't know. That disturbs me. As a lawyer it disturbs me.

MR. DE PETRIS: For a moment we don't know what the answers are. We don't know if they're

relevant. A 71

MR. LONDON: I'm on trial here all next week. I will make an appointment with Mr. DePetrus and sit down with him.

THE COURT: Are you actually starting before Judge Neaher?

MR. LONDON: I continue to be flooded with
phone calls to make sure I'll be ready.

THE COURT: How long is that case going to be?

MR. LONDON: I'll say a week. The witnesses are from out of state. The defense witnesses. I would roughly say a week. I'm going to have problems on fixing a date.

THE COURT: I'm having both these cases scheduled for Monday morning. I don't know if Judge Neaher's case is going on or not. He may have made phone calls to other people, gotten different answers. As I told Mr. DePetris, I'm contemplating that we will have the selection of a jury and openings on Monday and his first witness, but that his out-of-town witnesses may not be called until Tuesday.

MR. LONDON: I'm not ready in the Inniss case. I want to bring one other thing to your

1 attention. I quite some time ago had a problem,
2 I'm sure your Honor has forgotten in fixing a
3 date. I had had a case with your Honor where
4 a misunderstanding arose and everybody but the
5 prosecutor heard me say I was leaving for vacation
6 on a certain date and I almost lost my vacation,
7 but I did not. Your Honor allowed me to go.

8 There's an article in the Law Journal
9 Friday, April 11th, 1975, this month, by Roy Cohn,
10 the distinguished--

11 THE COURT: I'm aware of the article.

12 MR. LONDON: I have run into this problem--

13 THE COURT: Problems on both sides. There's
14 a lot more to be said than Roy Cohn says.

15 MR. LONDON: There always is. I don't cite
16 Roy Cohn as the paragon of the principles that
17 he sets forth, but there are cases that I have
18 committed myself to.

19 THE COURT: We have a witness in jail on
20 this case.

21 MR. LONDON: She's in jail serving a sentence.
22 I don't understand why her priority should take
23 precedence over my commitment on jail cases that
24 I have given in other courts that I would try
25 with a schedule of dates.

1 THE COURT: You get down to what Justice
2 Jackson said thirty years ago or more. When a
3 lawyer has more cases than he can handle, he has
4 two alternatives: to hire other lawyers to work
5 for him or to take less cases.

6 MR. LONDON: Your Honor knows they all want
7 London.

8 THE COURT: When the demands exceed the
9 supply, you charge more and take less cases.

10 Let me get back to Mr. Inniss.

11 MR. LONDON: I'll be here to start the other
12 case. I'll be here to answer this case. I'll
13 produce the passport and turn it over to the Court
14 and the alien card which I also have.

15 THE COURT: Very well.

16 MR. LONDON: I must say to the Court I am
17 not ready on this case. I haven't prepared it for
18 trial. It's not a case that I can just come in
19 and try. It's not a simple assault case. I just
20 don't think it's fair to this defendant and I just
21 don't understand why there's a priority. It's my
22 understanding--

23 THE COURT: You were here on January 31,
24 which is ten weeks ago.

25 MR. LONDON: We have run into a multitude

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1 of problems since January 31.

2 THE COURT: Let me find out from Mr. Inniss
3 if he understands whatever problems there may be.

4 MR. LONDON: Mr. Inniss advises me he's
5 walking around without any identification. That's
6 his personal problem. A call to Mr. DePetrus to
7 verify the alien card is here.

8 MR. DE PETRIS: We can provide him with
9 something which he would be able to identify him-
10 self with but which would not enable him to leave
11 the jurisdiction.

12 THE COURT: Suppose you do that.

13 MR. LONDON: A letter from your office.

14 MR. DE PETRIS: I'll have that by Monday.

15 THE COURT: Mr. Inniss, you heard a lot
16 of the discussion. I don't like people changing
17 attorneys on the eve of trial, but in your case,
18 if you want to do it, I'll let you do so. I said
19 the fact that you may have paid a retainer to Mr.
20 London should not deter you from doing what's
21 in your best interest in the defense of this case.

22 Do you want Mr. London to represent you?

23 DEFENDANT INNISS: Yes.

24 THE COURT: Miss McLenan, be here with
25 Mr. Handman Monday morning.

1 DEFENDANT MC LENAN: I don't want him to
2 defend me.

3 MR. DE PETRIS: If I might interject,
4 one possible question which I'm not sure has been
5 solved as yet and that is concerning the conver-
6 sations between Manuella Canatti and Mr. London,
7 I don't know what they were, but one question
8 I would have is Mr. London going to use those
9 conversations on cross-examination of Manuella
10 Canatti if they would serve his client's interests
11 to use those conversations or the information
12 which was obtained from those conversations?

13 MR. LONDON: I told Mr. DePetrinis in our
14 conference, on no account, unless she to the co-
15 defendant's counsel completely waives her
16 attorney-client privilege with all her attorneys,
17 I will premise no question based on any fact
18 that she told me and I will not ask any question
19 in the form of, for example, "Isn't it a fact you
20 told me."

21 THE COURT: I understand that's the tenor
22 of what you said before, that you will not use
23 anything that you derived from conversations.

24 MR. LONDON: I cannot unless she openly
25 waives that privilege. Mrs. McLenan said something

1 to the effect--A 76

2 THE COURT: I've covered that. I told her
3 to be here Monday morning. I don't feel the same
4 way about letting her change counsel at this time.

5 Be here Monday morning at ten. Mr. Handman
6 will be here.

7 MR. LONDON: Through my client, I have
8 learned she has had problems in communicating
9 with Mr. Handman and it's her feeling, and I only
10 know this by hearsay--

11 THE COURT: She has told me before you were
12 here. I put it over until ten o'clock.

13 Mr. DePetrìs and I, I think, Judge, can, as
14 we should as attorneys, work this--

15 THE COURT: I'm not sure you can, but
16 I invite you to do your best.

17 MR. LONDON: We'll do our best, your Honor.
18 There's one last thing that was not resolved.

19 I don't mean to take up any more time, you
20 had promised me the minutes. It occurred to me
21 after I left the courtroom that I would need the
22 minutes of every occasion that Mrs. Canatti was
23 in court in order to properly cross-examine her.

24 THE COURT: I sent you one set of minutes.

25 MR. LONDON: That's the only one--

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1 THE COURT: Didn't I send you the plea
2 minutes?

3 MR. LONDON: I did not get them. I don't
4 have them. Were they mailed yesterday?

5 THE COURT: A week ago.

6 MR. LONDON: I did not get them, your Honor.
7 The Judge directed they be furnished.

8 THE COURT: They were, and I directed they
9 be sent to you. I'll find out about them.

10 MR. LONDON: Judge might I have your consent
11 to order the minutes of each court appearance of
12 Miss Canatti? I'll go down to the stenographers'
13 room.

14 THE COURT: Yes, they'll have a record of
15 the one I already ordered.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-against- :

RICARDO INNISS et al. : 74 CR 791

Defendants :

-----x

United States Courthouse
Brooklyn, New York

May 7, 1975
2:50 p.m.

B e f o r e :

HONORABLE ORRIN G. JUDD,

U.S.D.J.

SHELDON SILVERMAN
Acting Official Court Reporter

Appearances:

DAVID G. TRAGER, Esq.
United States Attorney for the
Eastern District of New York

By: DAVID DE PETRIS, Esq.
Assistant U.S. Attorney

IRA LONDON, Esq.
Attorney for Defendant

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THE COURT: Good afternoon.

MR. LONDON: How are you today?

THE COURT: I'm waiting to dispose of another case before me, but I'll hear you.

MR. LONDON: We're here on my application, your Honor.

As I had indicated to the Court, I met with Mr. DePetrus and under his grueling examination told him everything he wanted to know regarding the areas that we discussed with the Court.

It appears that Mr. DePetrus feels that there is a substantial possibility that I will be called as a witness during the trial in chief.

If your Honor is convinced of that, I would ask to be relieved of representing Mr. Inniss inasmuch as I cannot be a witness on a factual issue--

THE COURT: Where is Mr. Inniss?

MR. LONDON: I thought today at least we could find out whether your Honor agrees with the probability of my being called, if your Honor will admit that into evidence. If your Honor will, I don't think there's any question but that I have to leave the case.

MR. DE PETRIS: The answer to one of the

1 questions I asked Mr. London indicates that one
2 of the defendants did retain Mr. London to repre-
3 sent Manuella Canate. It's certainly relevant
4 and material to the case, which is scheduled to
5 to go trial.

6 THE COURT: There's Inniss and McLenan.

7 MR. LONDON: Inniss did not. That's my
8 client.

9 THE COURT: I suppose this is not a case
10 where there's much basis for severance. I've
11 tried to keep the two together. You're going
12 to have the same defendants.

13 MR. DE PETRIS: Cases would take equally
14 long as against each defendant. It's clear it
15 was a conspiracy involved between these people.
16 I don't think it would be appropriate at all for
17 a severance in this case.

18 MR. LONDON: If there is a severance,
19 I would stay in.

20 THE COURT: If you're representing
21 Mr. Inniss, if you're called with respect to the
22 case against McLenan, I think it would be preju-
23 dicial to him.

24 MR. DE PETRIS: The association becomes
25 very strong then.

1 THE COURT: It would be contrary to the
2 spirit of the rule against an attorney being a
3 witness.

4 MR. LONDON: There isn't any question
5 about it.

6 THE COURT: It seems to me--

7 MR. DE PETRIS: I'm not indicating to the Court
8 that I will definitely call Mr. London, but there
9 is a substantial likelihood that I will.

10 MR. LONDON: What I want to determine
11 today is would your Honor admit that testimony
12 as being relevant.

13 THE COURT: I would suppose, Mr. London, that
14 the testimony of a defendant charged with parti-
15 cipation in importation, paid the fee of a courier,
16 is relevant to tie him into a conspiracy.

17 MR. LONDON: My testimony is not that she
18 personally paid the fee. My testimony is that she
19 came to me and told me that she and friends and
20 one relative had raised the money to pay for a
21 private lawyer. Substantially--

22 MR. DE PETRIS: She was the woman who came
23 and paid you.

24 MR. LONDON: Yes. I wonder if that is
25 relevant as an act in furtherance of a conspiracy.

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1 That's the only reason we're here.

2 If your Honor feels that it is, then I have
3 to be out of the case.

4 THE COURT: From the Court of Appeals cases
5 that I have read on what is relevant to show a
6 relationship between two defendants, I would say
7 I would have to admit it.

8 MR. LONDON: Then I would ask that your
9 Honor withdraw the certificate of engagement and
10 next Tuesday I'll bring another attorney with me.
11 Between now and Tuesday I will get Mr. Inniss and
12 I'll recommend one or two attorneys for him to go
13 to and I'll tell him to make arrangements to
14 retain them.

15 THE COURT: Very well. I'm sorry it turns
16 out that way.

17 MR. LONDON: I looked forward to trying
18 the case. I wanted to try this case. It would
19 be unfortunate if Mr. DePetrus turned out not to
20 call me as a witness.

21 MR. DE PETRIS: That's true.

22 MR. LONDON: Then I might say Mr. DePetrus
23 is afraid of my reputation in cross-examining
24 Government witnesses and he was at all costs dedi-
25 cated to getting me out of this case.

1 THE COURT: I think that's enough to
2 put on the record, Mr. London. We'll close the
3 proceeding now.
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AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

DAVID A. DE PETRIS, being duly sworn, says that on the 5th
day of May, 1976, I deposited in Mail Chute Drop for mailing in the
U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and
State of New York, a GOVERNMENT'S APPENDIX
of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper
directed to the person hereinafter named, at the place and address stated below:

Preminger, Meyer & Light, Esq.
66 Court Street
Brooklyn, N.Y. 11201

Herman Kaufman, Esq.
120 Broadway
New York, N. Y. 10005

Sworn to before me this
5th day of May, 1976

Elga S. Morgan
ELGA S. MORGAN
Notary Public, State of New York
No. 24-4501966
Qualified in Kings County
Commission Expires March 30, 1977

David A. DePetrus
